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11 Attorneys for Plaintiff

12 **UNITED STATES DISTRICT COURT**  
13 **CENTRAL DISTRICT OF CALIFORNIA**

14 KIM SHELBY,

15 Plaintiff,

16 vs.

17 TUFAMERICA, INC.,

18 Defendants.

Case No.: CV15-5073-MMM-JEM  
*Hon. Margaret M. Morrow Presiding*

**REQUEST FOR ENTRY OF  
DEFAULT AGAINST DEFENDANT  
TUFAMERICA, INC., A NEW  
YORK CORPORATION;  
DECLARATION OF FRANK  
GREGORY CASELLA, ESQ. IN  
SUPPORT THEREOF**

19 **ATTENTION CLERK OF THE ABOVE-ENTITLED COURT:**

20 Plaintiff Kim Shelby hereby requests that the Clerk of the above-entitled  
21 Court enter default in this matter against Defendant Tufamerica, Inc., a New York  
22 Corporation (“Tufamerica”) on the grounds that said Defendant has failed to  
23 appear or otherwise respond to the Complaint within the time prescribed by the  
24 Federal Rules of Civil Procedure.

25 Plaintiff served the operative Complaint and Summons on TUFAMERICA  
26 on August 12, 2015, as evidenced by the Proof of Service filed with the United  
27 States District Court Central District on August 24, 2015 (Dkt. 10). To date, no  
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1 response to the operative Complaint has been filed by Tufamerica, and the time for  
2 filing this response has now expired.

3 The Court issued an Order to Show Cause re Lack of Prosecution (“OSC”)  
4 on September 22, 2015 (Dkt. 11). In response, Plaintiff requested that the Court  
5 grant Plaintiff additional time to respond to the OSC in anticipation of the fruition  
6 of settlement discussions that would have resolved this action (Dkt. 12). The Court  
7 granted Plaintiff’s request and continued the deadline to respond to the OSC to  
8 October 19, 2015.

9 The parties have not yet been able to resolve this matter, and as the time for  
10 Defendant’s response to the Complaint has come due, Plaintiff requests that the  
11 Clerk enter a default against Defendant Tufamerica, Inc. Plaintiff notified counsel  
12 for Tufamerica on October 16, 2015 that Plaintiff would be seeking default should  
13 Tufamerica not confirm that it would be filing a response. As of the time of this  
14 filing, counsel for Tufamerica has not so confirmed. So owing, Plaintiff seeks this  
15 default.

16 The above-stated facts are set forth in the accompanying Declaration of  
17 Frank Gregory Casella, Esq., which is filed concurrently herewith.

18  
19 Dated: October 19, 2015

DONIGER / BURROUGHS

20  
21 By: /s/ Frank Gregory Casella  
22 Frank Gregory Casella, Esq.  
23 Attorneys for Plaintiff  
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**DECLARATION OF FRANK GREGORY CASELLA, ESQ.**  
**IN SUPPORT OF REQUEST FOR ENTRY OF DEFAULT**

I, Frank Gregory Casella, Esq., do declare and say as follows: I am above eighteen (18) years of age and not a party to this action. I am currently an attorney with Doniger / Burroughs, which represents Plaintiff Kim Shelby in this action and if called upon could and would competently testify to the following:

1. Plaintiff has filed an action entitled *Kim Shelby v. Tufamerica, Inc.; et al.* Case No.: CV15-05073-MMM-JEM.

2. Tufamerica, Inc., a New York Corporation, is and was a named Defendant in the above-stated action.

3. My firm caused to have served the operative Complaint and Summons in the above-named action on Tufamerica on August 12, 2015, as evidenced by the Proof of Service filed with the United States District Court Central District on August 24, 2015 (Dkt. 10).

4. Tufamerica has failed to file or serve a response to the operative Complaint and the time period in which was required to serve its response to the Complaint has expired.

5. The Court issued an Order to Show Cause re Lack of Prosecution on September 22, 2015 (Dkt. 11).

6. Plaintiff requested that the Court grant Plaintiff additional time to respond to the OSC in anticipation of the fruition of settlement discussions that would have resolved this action (Dkt. 12).

7. Plaintiff notified counsel for Tufamerica on October 16, 2015 that Plaintiff would be seeking default should Tufamerica not confirm that it would be filing a response. As of the time of this filing, counsel for Tufamerica has not so confirmed. So owing, Plaintiff seeks this default.

1 I solemnly swear and declare under penalty of perjury and the laws of the  
2 United States of America that the foregoing is true and correct.

3 Executed in Venice, California on October 19, 2015.  
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5 By: /s/ Frank Gregory Casella  
6 Frank Gregory Casella, Esq.  
7 Declarant  
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